

**Insurance Corporations. Foreign Benevolent and Fraternal
Companies. Agents, Appointment Of.**

Laws of 1901, page 150, requiring foreign corporations to file copies of their charter, statements and appointment of agent with Secretary of State, do not apply to foreign insurance companies, as they are governed by the special law on insurance, Sec. 650 to 739. Fraternal societies, lodges and benevolent organizations are exempted by Sec. 706 and 721 from filing the statements and appointments of agents required of other foreign insurance companies. Sec. 11, Art. 15 of the constitution requires foreign corporations to have one or more known places of business and an authorized agent upon whom process may be served. But as no law supplemental to this section has been passed designating how the place of business shall be known, or with whom appointment authorizing the agent to receive service of process shall be filed, there is no authority for requiring foreign fraternal societies, lodges and benevolent organizations to file written appointments of an agent upon whom service of process can be made in any public office in this state.

Helena, Montana, Feb. 10th, 1906.

Hon. A. N. Yoder, Secretary of State, Helena Montana.

Dear Sir:—Your request for an opinion, accompanied by a letter from the attorney of the Railway Employees Mutual Protective Society, incorporated under the laws of California, received.

From this letter it appears that this corporation has no capital stock, is not organized for profit, pays no salaries or commissions to its officers or agents, uses a ritual, and is organized for the following purposes, which are expressed in the articles of incorporation as follows:

“The mutual protection and relief of its members and for the payment of stipulated sums of money to its members or to the families of deceased members as indemnities or benefits or otherwise, for injuries or losses sustained, and generally to maintain and carry out such plans as shall tend to the mutual protection, relief and benefit of its members.”

The by-laws limits the membership to railroad employees and provides that all expenses for operation shall be paid from an initiation fee of five dollars, and that all indemnities shall be paid from assessments on the members.

The question submitted is: “Must a foreign corporation, of the character mentioned in the above statement of facts, file a certified copy of

its articles of incorporation and a written appointment of an agent in this State before it is permitted to do business herein?"

Senate Bill No. 46, Laws of 1901, page 150, provides that all foreign corporations or joint stock companies organized under the laws of any state of the United States or of any foreign government shall, before doing business within this state, file in the office of the Secretary of State a duly authenticated copy of their charter or articles of incorporation, and also a statement duly verified, and also an appointment in writing of some person who is a citizen of this state, upon whom service may be made in actions against such foreign corporation.

The language of this act is broad enough to include all foreign corporations of every kind and description, this being a general law defining the conditions upon which foreign corporations may do business in this state.

We find, however, that the legislature has made special provisions for many different kinds of insurance companies, and in such special laws have defined upon what conditions such foreign insurance companies may do business in this state.

Chapter 1 of Title 4, Political Code, (Secs. 650 to 683) relate to stock and mutual insurance corporations for purposes other than life insurance. By Sec. 666 of this chapter it is provided that foreign corporations of the kind defined in this chapter must file a statement setting out the facts mentioned in such section with the State Auditor, and Sec. 670 of the same chapter provides that such foreign corporations must appoint an agent upon whom service of process may be had in suits against the Company. The supreme court of Montana in the case of *State v. Rotwitt*, 17 Mont. 51, held that said Sections 666 and 670, being special laws, related exclusively to insurance companies; that the statement required to be filed with the Auditor, and the appointment of an agent, as therein provided, excluded such insurance companies from the operation of the general law concerning foreign corporations, and that when they had filed the statement and appointment as required by said sections, it was not necessary for such foreign insurance corporations to file a certificate, statement or appointment such as is required by Senate Bill No. 46, page 150, Laws of 1901.

By Sec. 683 of said Chapter 1, we find, however, that nothing in that chapter shall be construed to prevent any number of persons, not exceeding two hundred, from making mutual pledges and giving valid obligations to each other for their own insurance from loss by fire and death, provided such persons only insured property owned by one of their own number and only the lives of their own members or other employees, or receive premiums, of this chapter are not applicable to such associations or companies. Therefore, it would appear that it was the intention that companies organized pursuant to Section 683 should be exempt from filing the statement or appointment of agents that is required by Sections 666 or 670 of other insurance companies organized under said chapter.

Art. 1 of Chap. 2 of said Title 4 relates to assessment insurance corporations. (Secs. 700-711). Secs. 706 and 710 of said article provide for

the filing with the State Auditor of a statement and appointment of agent as required by such sections. Here again we find in Sec. 706 a provision to the effect that nothing herein contained applies to any organization of a purely social, religious or benevolent character where no commissions are paid and no salaried officers or agents are employed, or to any local association or society organized under and subject to the control of a grand or supreme body, or to any secret organization having subordinate lodges or councils, therefore, such mutual or benevolent insurance companies were exempted from filing the statement and appointment required of assessment life insurance companies.

Art. 2 of Chap. 2 of said Title 4 (Secs. 720 to 739), relate to assessment accident insurance corporations. By Secs. 728 and 729 of Art. 2, such accident insurance companies are required to file a statement and appointment of agent, and here again we find, under Sec. 721, that nothing in this act shall be construed to apply to secret or fraternal societies, lodges or councils now doing business in this state which conduct their business and secure members on the lodge system exclusively, having ritualistic work, not to any association organized solely for benevolent purposes and not for profit, and which do not employ said agents in soliciting business, therefore, such fraternal societies, lodges and benevolent organizations were exempted from filing the statement and appointment of agent required of other accident insurance companies.

From the facts stated in the letter accompanying your request for an opinion, it appears that the Railway Employees Mutual Protective Society comes under the provisions of either said Sec. 683, or belongs to one of the classes of benevolent associations exempted by Secs. 706 or 721 from the laws relating to assessment life or assessment accident companies.

The general policy of our legislature seems to be to exempt fraternal insurance companies, benevolent associations and secret societies from the provisions of the general insurance laws, and has expressly provided that they need not file the certificates, statements and appointment of agents required by said Secs. 666 and 670, and 706 and 710, 728 and 729, to be filed by stock and mutual insurance companies and by assessment life and assessment accident insurance companies. By so exempting such companies it would appear that the legislature intended that they need not file such certificates, statements and appointments of agents.

Where the legislature has enacted special legislation for the general government and control of a certain class of business such as insurance, and in such special laws have provided what shall be done by the persons and corporations engaged in such class of business and have further provided that certain things therein required need not be done by persons or corporations who are engaged in such business in a particular manner specified, we must presume that no other requirements or exemptions were intended for the persons or corporations engaged in such class of business than those contained in such special legislation.

In other words, the legislature by this special legislation intended to fully provide conditions and requirements for all persons and corporations engaged in the business governed by such legislation, and it cannot be

held that the legislature intended by such law to exempt certain persons or corporations from complying with certain provisions thereof and yet be required to comply with similar provisions contained in a general law which did not specially relate to that class of business. If such was the intention of the legislature, it was idle to make the exemptions in the special legislation.

Having decided that the general law (Laws of 1901, page 150) requiring foreign corporations to file statements and appointments of agents does not govern insurance corporations, and that benevolent, fraternal and secret organizations such as are mentioned in Sec. 706 and Sec. 721 are exempted from filing the statements and appointments of agents required of other insurance companies, we are next confronted with Sec. 11, Art. 15 of the State Constitution, which says:

"No foreign corporations shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served."

Under this section it is clear that any act of the legislature which authorizes foreign corporations of any kind to do business in this state without having one or more known places of business and an authorized agent upon whom process may be served, is in violation of the constitution, and to that extent, void.

Therefore, anything in said Section 706 and 721 which may be considered as an attempt to exempt foreign insurance companies doing business in this state from having one or more known places of business and an authorized agent upon whom process may be served, is invalid and void. It necessarily follows that all foreign corporations, including benevolent, fraternal and secret organizations which do business in this state, must have one or more known places of business and an authorized agent upon whom process may be served.

Any foreign insurance company which solicits insurance in this state, either through agents or advertising matter, or any fraternal insurance company which solicits members through local or subordinate lodges and which, upon such solicitation procure and write insurance of any kind or form and collect premiums or assessments, must be held to be doing business in this state.

However, the legislature has never enacted any law providing in what manner benevolent, fraternal, or secret societies such as are exempted by Sec. 706 and Sec. 721, must make known their places of business, or in what public office, if any, they must file their designation of agents upon whom they authorize service of process to be made.

Therefore, in the absence of legislation supplementing said Section 11 of the constitution, we have no law under which foreign insurance corporations of the classes exempted by said Secs. 706 and 721 can be required to file copies of their articles of incorporation or statements or written appointments of agents upon whom process may be served.

As to whether they have one or more known places of business and authorized agents upon whom process may be served is a question of fact which, under our present laws, can only be ascertained from some other source than the public files and records of the state or county offi-

cers, when such corporations voluntarily give in and file documents showing such facts.

Your attention is hereby called to an opinion given by this office upon a similar question to George M. Hays, Secretary of State, on December 17, 1904.

Very truly yours,
ALBERT J. GALEN,
Attorney General.

Licenses, Retail Liquor Dealers.

The provisions of Chapter 71, Laws of 1905, do not apply to cities, town, villages or camps containing a population of more than one hundred, whether incorporated or not. . Town, city or camp defined.

Helena, Montana, Feb. 28th, 1906,
C. B. Calkins, Esq., County Attorney, Hamilton, Montana.

Dear Sir:—We are in receipt of your favor of the 15th inst., in which you ask opinion as to whether it is necessary for one desiring to retail liquors in an unincorporated town of more than one hundred population, to secure a petition and present the same to the board of county commissioners before a license can be issued by the treasurer as required by the provisions of Chapter 71, Laws of 1905, page 154.

The provisions of said law do not apply to cities, towns, villages, or camps, containing a population of one hundred or more, whether incorporated or not. The question as to the number of inhabitants is sometimes difficult to determine and is purely one of fact, as is also, the proper boundaries of any such unincorporated town, city, etc. If the treasurer, in the exercise of his judgment and discretion, be not fully satisfied that any town, city village or camp in the county contains a population of one hundred or more, he is justified in refusing to grant such license, and the question of fact as to the number of inhabitants of any such town, etc., may be presented to, heard and determined by the board of county commissioners. In cases where it is shown by satisfactory evidence that such town, etc., contains one hundred or more inhabitants, compliance with said Chapter 71 is unnecessary.

As to what constitutes a town, city, or camp, and persons to be enumerated in determining the population thereof, we give you the following as our opinion:

A town, city or camp, etc., under said law, consists of a collection of habitations or places of abode inhabited, whether temporary or permanent, as distinguished from isolated places of residence, whether adjacent to such town, etc., or elsewhere. The town must be determined by the collectiveness of such habitations and the contiguous character thereof, and the enumeration is to be made of the people actually residing in such collective places of abode. And whether a given habitation should be enumerated in computing the population of a town, etc., is purely a question of fact to be determined from the evidence.

ALBERT J. GALEN,
Attorney General.